

JPA No.: 06-024
AG Contract No.: KR06-0654TRN
Project No.: STP-188-A(001)
Project: Wheatfields – US 60
Section: SR 188, MP 214.94-218.80
TRACS No.: H6155 01C
Budget Source Item No.: 10603
Mitigation

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
ARIZONA DEER ASSOCIATION

THIS AGREEMENT is entered into this date August 17, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the ARIZONA DEER ASSOCIATION (A Non-Profit Organization), acting by and through its BOARD OF DIRECTORS (the "ADA").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The ADA is empowered by its Board of Directors to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the ADA.
3. The parties hereto agree and acknowledge to the following conditions: **a)** The amounts referenced in this Agreement are subject to change; **b)** the estimated amounts can change substantially; and **c)** Both parties will perform their responsibilities consistent with the Agreement.
4. Incident to a highway-widening project contemplated by the State, on State Route (SR) 188 between Milepost (MP) 214.8 - MP 218.9 construction of the project will result in the permanent loss of 4.42 acres of waters of the U.S. under the jurisdiction of the U.S. Army Corps of Engineers (Corps). The State agrees to be responsible for the off-site mitigation, through an in-lieu fee lump sum payment, not to exceed \$44,200.00, herein referred to as the "Project".

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 28372
Filed with the Secretary of State
Date Filed: 8/17/06
Jessie K. Brewer
Secretary of State
By: [Signature]

II. SCOPE OF WORK

1. The ADA shall:

a. Upon execution of this Agreement invoice the State a lump sum amount, not to exceed \$44,200.00 for costs associated to complete the Project. Upon receipt of said \$44,200.00 deposit into an ADA account until completion of the Project. Any monies not expended upon completion of the Project shall be returned to the State with a recapitulation of the Project costs.

b. Request for payment shall be submitted using the State's Progress Payment Report form (attached). Electronic forms can be requested through the Joint Project Administration, at the address provided in Section III.

c. Dedicate this in-lieu fee payment toward the installation of water catchment devices to serve as wildlife drinkers. These catchment devices will be installed prior to the completion of SR 188 construction.

d. Two water catchment devices will be installed – one on U.S. Department of Agriculture Forest Service, Tonto National Forest (Forest Service) land and one on Arizona State Trust land. The ADA will complete all necessary clearances required for device installation in coordination with the Forest Service, Arizona State Land Department, Arizona Game & Fish Department, and any other pertinent agencies.

e. Prepare a mitigation monitoring report to document Project completion, including post-construction photographs of the catchment devices. The ADA will submit the mitigation monitoring report to Dee Bowling at the ADOT Environmental & Enhancement Group (EEG) within eight weeks of Project completion, and will complete any changes or additions requested by ADOT EEG.

f. Until the Project is completed, provide on an annual basis to the State an accounting of the monies expended for the Project.

2. The State shall:

a. Upon execution of this Agreement and receipt and approval of an invoice from the ADA, remit to the ADA a lump sum amount, not to exceed \$44,200.00 for costs associated to complete the Project. The lump sum payment check shall be made payable to the Arizona Deer Association and shall state in the subject line, that it is for Section 404 mitigation requirements regarding the Wheatfields-US 60 project (#2003-00451-CJL).

b. Provide to the Corps copies of the lump sum payment check and transmittal letter to demonstrate successful transfer of the mitigation funds by September 30, 2006.

c. Upon review and approval of the mitigation monitoring report prepared by the ADA, including any necessary changes or additions, ADOT EEG will submit the report to the Corps.

3. Both Parties Agree:

a. That the Project is intended to be completed within one year of execution of this Agreement. If the Project is not completed as noted herein, the parties may extend the Agreement by Amendment.

b. No member of, or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

c. Any information furnished to the ADA under this Agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

d. Modifications to the scope of this Agreement shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

e. Improvements placed on Forest Service and Arizona State Trust land at the direction of either of the parties, shall thereupon become property of the land managing agencies and shall be subject to the same similar nature. No part of this Agreement shall entitle the ADA to any share or interest in the Project other than the right to use and enjoy the same under the existing regulations of the land managing agencies.

f. This Agreement in no way restricts the ADA or the State from participating in similar activities with other public or private agencies, organizations and individuals.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements provided herein. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to the other party.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as Indemnitee") from and against any and all claims, losses, liability, costs or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Arizona Deer Association
Attn: Dominick Lopano, President
P.O. Box 21868
Mesa, Arizona 85277
(602) 395-3337
(623) 875-9284 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be

terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.


10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

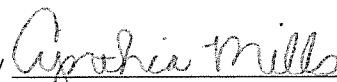
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

ARIZONA DEER ASSOCIATION

STATE OF ARIZONA

Department of Transportation

By 
DOMINICK LOPANO
President

By 
CYNTHIA MILLS
Joint Project Administrator

Date _____

Date _____

ATTORNEY APPROVAL FORM FOR THE ARIZONA DEER ASSOCIATION


I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the Arizona Deer Association, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Arizona Deer Association under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2006.



Attorney

<p>TERRY GODDARD Attorney General</p>	<p style="text-align: center;"> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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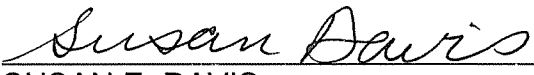
AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0654TRN (**JPA 06-024**), an Agreement between The State of Arizona and Arizona Deer Association, has been reviewed pursuant to A.R.S. § 28-401 by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 8, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:973538
Attachment